

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
P.D. & J. MEATS COMPANY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 82-48

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a \$5000 civil penalty and regulatory order for alleged violation of RCW 90.48.080, came on for hearing before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, and David Akana, member, convened at Lacey, Washington on September 13, 1982. William A. Harrison, Administrative Law Judge, presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its attorney, Charles Peter Curran.
Respondent appeared by Charles K. Douthwaite, Assistant Attorney

1 General. Reporter Kim Otis recorded the proceedings

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant, P.D. & J Meats (PD & J), operates a beef slaughter
7 house located on the Green River in Kent. Founded in 1935, it remains
8 a small business enterprise. Since 1980 it has been operated by its
9 sole proprietor, Michael S. Lotto.

10 II

11 When cattle are slaughtered inside the plant, the resulting blood
12 is channeled to an outdoor holding tank. This "kill blood" is sold to
13 a company which removes it from the site and uses the blood in
14 manufacturing fertilizer. Manure still within the animal when killed
15 ("paunch manure") goes to another outside storage tank. The effluent
16 from wash water, blood and manure from the slaughter room floor goes
17 to a third outdoor tank. Disposal of this wash water effluent is at
18 issue in this appeal.

19 III

20 Waste discharge permits issued by the State Department of Ecology,
21 (DOE) to PD & J in 1964, 1969, and 1974 all specify that wash water
22 effluent will go to a drainfield.

23 IV

24 Following a citizen complaint, DOE inspectors observed red
25 effluent draining into the Green River in June, 1980. The inspectors

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1 warned Mr. Lotto to guard against any discharge of blood to the Green
2 River. On another date in June, 1980, DOE inspectors observed
3 discharge of manure at the river bank. By letter of July 23, 1980,
4 DOE reminded Mr. Lotto that the existing system for handling wastes
5 (involving discharge to the Green River) was not adequate. The letter
6 called for engineering plans to correct the problem of direct
7 discharge.

8 By reply letters of August 8, and September 16, 1980, Mr. Lotto
9 assured DOE that the problem was due to a damaged drainfield line
10 which had been repaired.

11 V

12 In fact, the drainfield is located in saturated ground and was
13 inoperable even with the repaired line. Hence, a week after his
14 September 16, 1980, letter to DOE, Mr. Lotto circumvented the
15 drainfield by using a pump and fire hose to discharge the wash water
16 effluent onto the surface of a marshy area near the Green River. This
17 was documented by DOE through photographs taken on September 23, 1980.

18 VI

19 On February 17, 1982, a patrol officer of the State Department of
20 Fisheries observed a pump hose leading from the paunch manure tank
21 over the bank of the Green River. He observed waste by-products and
22 manure on the river bank adjacent to the hose. He observed blood and
23 foam in the back eddies of the river. He warned PD & J personnel that
24 such a discharge was illegal. Mr. Lotto, informed of the situation,
25 ordered the pumping to stop.

VII

On the very next day, February 18, 1982, pumping of the wash water effluent through the same fire hose was in progress when an engineer from DOE arrived at the plant. The DOE engineer observed that the thick, red wash water effluent was being discharged onto swampy ground adjacent to the Green River. The discharge also ran from there into the Green River. Samples of the effluent discharged by PD & J showed a biological oxygen demand (BOD) of 2400 mg/liter. BOD is a measure of the oxygen consumption of an effluent, and thus the degree to which an effluent deprives aquatic life of the dissolved oxygen which it requires. The BOD of raw sewage, for comparison, is 100-300 mg/liter. The pH of the effluent discharged by PD & J was 7 which is normal for blood. The effluent discharged to the water by PD & J Meats on February 18, 1982, contained visible and measurable amounts of blood. The color and biological properties of the receiving waters changed accordingly rendering those waters detrimental to aquatic life

VIII

Returning to the site after February 18, 1982, DOE's engineer observed evidence of manure discharge by PD & J over the bank of the Green River.

IX

The DOE engineer notified a PD & J employee of his observations on February 18, 1982. After considering the prior record of warnings, DOE issued to PD & J on April 2, 1982: (1) a civil penalty assessment of \$5000 for violation of RCW 90.48.080 on February 18, 1982, and;

1 (2) a regulatory order, DE 82-207 requiring submission of plans for an
2 alternate method of animal blood, manure and entrails disposal
3 together with a requirement that such a plan be implemented after DOE
4 approval. From this, PD & J appeals.

5 X

6 From the day after the discharge at issue, Mr. Lotto of PD & J
7 began pumping the wash water effluent into a truck which he acquired
8 for the purpose, and began hauling these from the site to local farms
9 which accept the effluent for use as fertilizer. He now maintains a
10 log book showing the destination of each truck load. The evidence
11 shows that use of the pump and fire hose has been abandoned.

12 XI

13 Any Conclusion of Law which should be deemed a Finding of Fact is
14 hereby adopted as such.

15 From these Findings the Board enters these

16 CONCLUSIONS OF LAW

17 I

18 Appellant unlawfully caused, permitted or suffered a discharge of
19 organic matter (blood effluent) that tended to cause and caused
20 pollution to waters of this state in violation of RCW 90.48.080. Such
21 matters cause pollution of state waters as defined at RCW 90.48.020 in
22 that appellant's blood effluent entered waters of the Green River and
23 a swampy area adjacent to it, waters of this state, changing their
24 color and biological properties so as to render such waters
25 detrimental or injurious to aquatic life.

26
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II

The maximum civil penalty for the violation of RCW 90.48.080 committed by appellant is \$5000. RCW 90.48.144(3) Regulatory orders are also authorized for the correction of activity such as appellants RCW 90.48.120(2).

III

In light of appellant's past record of effluent discharges and unheeded warnings, the amount of civil penalty assessed by DOE and the requirements of the regulatory order are both appropriate. However, because appellant now hauls the blood effluent by truck, a portion of the penalty should be suspended on condition that: (1) there be no violation of chapter 90.48 RCW for a period of 5 years, and; (2) plans be submitted, approved and implemented which describe a means for disposal of blood effluent which DOE can monitor. Our Order in this matter will leave approval of those disposal plans to the sound discretion of DOE as provided in the regulatory order DF 82-207 which should be affirmed, except that the due date for submission of plans should be measured from the date of this Order. Thus the suspended amount of penalty will become due if appellant either violates any provision of chapter 90.48 RCW within 5 years of the date of this Order or fails to file written plans and specifications with DOE within 2 weeks of the date of this Order, or fails to implement such plans when approved by DOE.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The Department of Ecology regulatory order, DE 82-207, is affirmed with modification of one due date as noted hereafter.

The \$5000 civil penalty is affirmed; provided, however, that \$2000 is suspended on condition that:

1. Appellant not violate any provision of chapter 90.48 RCW for 5 years from the date of this Order;

and

2. Appellant comply with DOE order DE 82-207 which is affirmed except that appellant shall submit the plans and specifications within 2 weeks from the date of this Order.

DONE at Lacey, Washington this 8th day of December, 1982.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

David Akana
DAVID AKANA, Lawyer Member

William A. Harrison
WILLIAM A. HARRISON
Administrative Law Judge

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